

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CERRON T. DEJOHNETTE,
Plaintiff,
v.
O. GONZALES, et al.,
Defendants.

Case No. 1:17-cv-00696-MJS (PC)
ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND
(ECF No. 1)
THIRTY DAY DEADLINE

Plaintiff, a prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 19, 2017. (ECF No. 1.) Plaintiff’s complaint is before the Court for screening. He has consented to Magistrate Judge jurisdiction. (ECF No. 6.)

I. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is

1 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee,
2 or any portion thereof, that may have been paid, the court shall dismiss the case at any
3 time if the court determines that . . . the action or appeal . . . fails to state a claim upon
4 which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

5 **II. Pleading Standard**

6 Section 1983 provides a cause of action against any person who deprives an
7 individual of federally guaranteed rights “under color” of state law. 42 U.S.C. § 1983. A
8 complaint must contain “a short and plain statement of the claim showing that the pleader
9 is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
10 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
11 mere conclusory statements, do not suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
12 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)), and courts “are not
13 required to indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d
14 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual
15 allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 678.

16 Under section 1983, Plaintiff must demonstrate that each defendant personally
17 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
18 2002). This requires the presentation of factual allegations sufficient to state a plausible
19 claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,
20 969 (9th Cir. 2009). Prisoners proceeding pro se in civil rights actions are entitled to
21 have their pleadings liberally construed and to have any doubt resolved in their favor,
22 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted), but nevertheless,
23 the mere possibility of misconduct falls short of meeting the plausibility standard, Iqbal,
24 556 U.S. at 678; Moss, 572 F.3d at 969.

25 **III. Plaintiff’s Allegations**

26 Plaintiff is currently incarcerated at North Kern State Prison in Delano, California,
27 where his claims arose. He names Defendants Sergeant O. Gonzalez, Correctional
28 Officer Perez, and Warden Kelly Santoro.

1 Plaintiff's allegations are summarized as follows:

2 Plaintiff is wheelchair bound and suffers from COPD and congestive heart failure,
3 and has a pacemaker.

4 On an unspecified date, Sergeant Gonzalez slapped Plaintiff with an open palm,
5 picked him up out of his wheelchair, twisted his elbow, and threw him to the ground.
6 Officer Perez helped Gonzalez throw Plaintiff to the ground, twist Plaintiff's arm, and
7 handcuff him.

8 Warden Santora denied Plaintiff's 602s regarding this incident.

9 Plaintiff seeks monetary damages.

10 **IV. Discussion**

11 **A. Eighth Amendment Excessive Force**

12 The unnecessary and wanton infliction of pain violates the Cruel and Unusual
13 Punishments Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5
14 (1992) (citations omitted). For claims arising out of the use of excessive physical force,
15 the issue is "whether force was applied in a good-faith effort to maintain or restore
16 discipline, or maliciously and sadistically to cause harm." Wilkins v. Gaddy, 559 U.S. 34,
17 37 (2010) (per curiam) (citing Hudson, 503 U.S. at 7) (internal quotation marks omitted).
18 The objective component of an Eighth Amendment claim is contextual and responsive to
19 contemporary standards of decency, Hudson, 503 U.S. at 8 (quotation marks and citation
20 omitted), and although *de minimis* uses of force do not violate the Constitution, the
21 malicious and sadistic use of force to cause harm always violates contemporary
22 standards of decency, regardless of whether or not significant injury is evident. Wilkins,
23 559 U.S. at 37-8 (citing Hudson, 503 U.S. at 9-10) (quotation marks omitted).

24 Here, Plaintiff's claims are presented in a vacuum. He does not describe the
25 events that took place or the words that were spoken prior to and immediately following
26 the alleged use of force. Given what is alleged, it is possible the Defendant simply walked
27 up to Plaintiff and assaulted him for no reason or in response to Plaintiff's exercise of
28 some legitimate right. However, it is just as possible that Plaintiff disobeyed a lawful order

1 necessary to prison safety and security and Defendants had to use force to ensure
2 compliance. In short, there is no way to determine from the meager facts pled whether
3 Plaintiff is alleging the force was applied maliciously or in an effort to maintain institutional
4 security. Plaintiff will be given leave to amend. If he chooses to amend, he must include
5 all relevant facts regarding this claim.

6 **B. Denial of 602**

7 The existence of an inmate appeals process does not create a protected liberty
8 interest upon which Plaintiff may base a claim that he was denied a particular result or
9 that the appeals process was deficient. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir.
10 2003); Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). Because there is no right to
11 any particular grievance process, it is impossible for due process to have been violated
12 by ignoring, denying, or failing to properly process grievances. Numerous district courts in
13 this circuit have reached the same conclusion. See Smith v. Calderon, No. C 99–2036
14 MJJ PR, 1999 WL 1051947 (N.D. Cal. 1999) (finding that failure to properly process
15 grievances did not violate any constitutional right); Cage v. Cambra, No. C 96–2484 FMS
16 1996 WL 506863 (N.D. Cal.1996) (concluding that prison officials' failure to properly
17 process and address grievances does not support constitutional claim); Murray v.
18 Marshall, No. C 94–0285 EFL, 1994 WL 245967 (N.D. Cal. 1994) (concluding that
19 prisoner's claim that grievance process failed to function properly failed to state a claim
20 under § 1983).

21 Prisoners do, however, retain a First Amendment right to petition the government
22 through the prison grievance process. See Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir.
23 1995). Therefore, interference with the grievance process may, in certain circumstances,
24 implicate the First Amendment. Such a claim would be based on the theory that
25 interference with the grievance process resulted in a denial of the inmate's right to access
26 to the courts. This right includes petitioning the government through the prison grievance
27 process. See Lewis v. Casey, 518 U.S. 343, 346 (1996); Bounds v. Smith, 430 U.S. 817,
28 821 (1977); Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995) (discussing the right in

1 the context of prison grievance procedures). The right of access to the courts, however,
2 only requires that prisoners have the capability of bringing challenges to sentences or
3 conditions of confinement. See Lewis, 518 U.S. at 356–57. Moreover, the right is limited
4 to non-frivolous criminal appeals, habeas corpus actions, and § 1983 suits. See id. at 353
5 n. 3 & 354–55. Therefore, the right of access to the courts is only a right to present these
6 kinds of claims to the court, and not a right to discover claims or to litigate them
7 effectively once filed. See id. at 354–55.

8 As a jurisdictional requirement flowing from the standing doctrine, the prisoner
9 must allege an actual injury. See id. at 349. “Actual injury” is prejudice with respect to
10 contemplated or existing litigation, such as the inability to meet a filing deadline or
11 present a non-frivolous claim. See id.; see also Phillips v. Hust, 477 F.3d 1070, 1075 (9th
12 Cir. 2007). Delays in providing legal materials or assistance which result in prejudice are
13 “not of constitutional significance” if the delay is reasonably related to legitimate
14 penological purposes. Lewis, 518 U.S. at 362.

15 Plaintiff will be provided an opportunity to amend to allege facts, if any, showing
16 how, if at all, the alleged interference with the grievance process resulted in an actual
17 injury.

18 **V. Conclusion**

19 Plaintiff’s complaint fails to state a claim. The Court will provide Plaintiff with the
20 opportunity to file an amended complaint.

21 If Plaintiff files an amended complaint, it should be brief, Fed. R. Civ. P. 8(a), but
22 under section 1983, it must state what each named defendant did that led to the
23 deprivation of Plaintiff’s constitutional rights and liability may not be imposed on
24 supervisory personnel under the theory of *respondeat superior*. Iqbal, 556 U.S. at 676-77.
25 Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to
26 relief above the speculative level. . . .” Twombly, 550 U.S. at 555 (citations omitted).

27 Finally, an amended complaint supersedes the original complaint, Lacey v.
28 Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be

1 “complete in itself without reference to the prior or superseded pleading,” Local Rule 220.

2 Accordingly, it is HEREBY ORDERED that:

- 3 1. The Clerk’s Office shall send Plaintiff a blank complaint form along with a
4 copy of the complaint filed May 19, 2017;
- 5 2. Within **thirty (30) days** from the date of service of this order, Plaintiff must
6 either:
7 a. File an amended complaint curing the deficiencies identified by the
8 Court in this order, or
9 b. File a notice of voluntary dismissal; and
- 10 3. If Plaintiff fails to comply with this order, the Court will dismiss this action for
11 failure to obey a court order and failure to prosecute.

12 IT IS SO ORDERED.

13 Dated: July 5, 2017

14 */s/ Michael J. Seng*
15 UNITED STATES MAGISTRATE JUDGE

16
17
18
19
20
21
22
23
24
25
26
27
28